109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 109–258

REQUESTING THAT THE PRESIDENT TRANSMIT TO THE HOUSE OF REPRESENTATIVES INFORMATION IN HIS POSSESSION RELATING TO CONTRACTS FOR SERVICES OR CONSTRUCTION RELATED TO HURRICANE KATRINA RECOVERY THAT RELATE TO WAGES AND BENEFITS TO BE PAID TO WORKERS

OCTOBER 28, 2005.—Referred to the House Calendar and ordered to be printed

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Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 467]

The Committee on Education and the Workforce, to whom was referred the resolution (H. Res. 467) requesting that the President transmit to the House of Representatives information in his possession relating to contracts for services or construction related to Hurricane Katrina recovery that relate to wages and benefits to be paid to workers, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

PURPOSE

H. Res. 467, a resolution of inquiry, requests the President to transmit to the House of Representatives specified information in his possession relating to contracts for services or construction related to Hurricane Katrina recovery that relate to wages and benefits to be paid to workers.

COMMITTEE ACTION

109th Congress

On September 27, 2005, Representative George Miller introduced H. Res. 467, a resolution of inquiry requesting the President to transmit to the House of Representatives certain information in his possession relating to contracts for services or construction related to Hurricane Katrina recovery that relate to wages and benefits to

be paid to workers. Clause 7 of rule XIII of the Rules of the House of Representatives provides that if a resolution of inquiry is not reported by the committee(s) of jurisdiction to the House within fourteen legislative days of its introduction, a motion to discharge such committee(s) from consideration of the resolution shall be privileged on the Floor of the House.

H. Res. 467 was referred to the Committee on Education and the Workforce on September 27, 2005. The Committee held no hearings on the bill.

On October 20, 2005, by a roll call vote of 25 ayes to 20 nays, the Committee on Education and the Workforce reported H. Res. 467 unfavorably to the House of Representatives with the recommendation that the resolution not be adopted.

SUMMARY

H. Res. 467 directs the President [1] to transmit to the House of Representatives within fourteen days certain specified information relating to contracts for services or construction related to Hurricane Katrina recovery that relate to wages and benefits to be paid to workers.

Specifically, the resolution calls for the production of: (1) copies of any portions of any contracts in the President's possession for services or building or other construction (including pre-awarded contracts or contracts that were modified or extended) related to Hurricane Katrina recovery or rebuilding that address wages and benefits to be paid to workers pursuant to the Act commonly known as the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.*), or the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*) that were awarded by the Federal Emergency Management Agency (or at the request of such agency) or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers; and (2) any communications in the President's possession made or received, on or after August 26, 2005, by the Federal Emergency Management Agency or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers, related to compliance with or enforcement of the Act commonly known as the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.*), or the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*) in the geographic areas specified in the President's Proclamation 7924 of September 8, 2005.

COMMITTEE STATEMENT AND VIEWS

Part A: Background

Enacted in 1931, the Davis-Bacon Act generally requires the payment of "prevailing wages"—as determined by the Department of Labor (DOL)—on construction contracts entered into by the federal government or the District of Columbia over $2,000.[2] Since its enactment, the Davis-Bacon Act has been expanded via legislation to

[1] Although the resolution does not so state, a significant portion of the information requested is in the possession and custody of various administrative agencies named in the resolution and presumably is to be transmitted to the House of Representatives via the President.

[2] *See generally* 40 U.S.C. § 3141 *et seq.*

apply to 38 federal programs, commonly referred to as the "Davis-Bacon Related Acts."[3] On contracts subject to the Davis-Bacon Act, federal contractors must certify and submit weekly payroll reports to DOL to ensure that appropriate wages are being paid. The Secretary of Labor determines prevailing wage rates based on a survey of local wage rates. The Secretary is responsible for gathering the wage rate and publishing and updating the data.[4]

Section 6 of the Davis-Bacon Act provides that the President may suspend the Act's provisions in the case of national emergency.[5] Prior to 2005, the Davis-Bacon Act has been explicitly suspended on three occasions: (a) in 1934, President Franklin Roosevelt suspended the Act for what appears to have been administrative convenience associated with New Deal legislation. It was restored to full strength in less than 30 days with few people, seemingly, aware of the suspension; (b) in 1971, President Nixon suspended the Act as part of a campaign intended to quell inflationary pressures that affected the construction industry. In just over four weeks, the Act was reinstated when the President moved on to different approaches to the problem; (c) in 1992, in the wake of Hurricanes Andrew and Iniki, President George H. W. Bush suspended the Act in order to render reconstruction and clean-up in Florida and the Gulf Coast and in Hawaii more efficient; the impact of the suspension is unclear inasmuch as it was suspended on October 14, 1992, just days prior to the 1992 election, and reinstated by President Clinton on March 6, 1993 (roughly a five month period).[6]

The Service Contract Act of 1965 generally provides that contractors and subcontractors providing services on covered federal or District of Columbia contracts in excess of $2,500 must pay service employees in various classes prevailing wages, including fringe benefits, as determined by the Department of Labor. The Act also requires contractors to pay prospective increases contained in a predecessor contractor's collective bargaining agreement when taking over a previously held contract.[7] Safety and health standards also apply to such contracts.[8] Section 4 of the Service Contract Act provides that the Secretary of Labor may waive the Act with reasonable limitations and allow reasonable variation from any or all provisions of the Act, where the Secretary determines that this action is in the public interest or will avoid the serious impairment of government.[9]

The Fair Labor Standards Act of 1938 (FLSA) generally prescribes standards for minimum wage and overtime pay for most private and public employees.[10] The FLSA requires, *inter alia,* that employers pay covered employees who are not otherwise exempt at least the federal minimum wage, and overtime pay of one-and-one-half-times their regular rate of pay. The FLSA also prescribes rec-

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[3] *See* John R. Luckey & Jon O. Shimabukuro, *Prevailing Wage Requirements and the Emergency Suspension of the Davis-Bacon Act,* CRS Report No. RS22265 (September 16, 2005) at 2 & 2 n. 11.

[4] *See* 40 U.S.C. § 3141.

[5] *See* 40 U.S.C. § 3147.

[6] The Act may also have been suspended during World War II as part of a generalized state of emergency. See William G. Whittaker, *The Davis-Bacon Act: Suspension,* CRS Report No. RL33100 (September 26, 2005), at 1 n. 1, 3–16.

[7] *See generally* 41 U.S.C. § 351 *et seq.*

[8] Id.

[9] *See* 41 U.S.C. § 353(b).

[10] *See generally* 29 U.S.C. § 201 *et seq.*

ordkeeping and child labor standards.[11] The FLSA does *not* contain any requirement with respect to the payment of "prevailing wages" nor, apart from the minimum wage, does it set any wage "floor" for federal contracts. The FLSA does not provide either the President or the Secretary of Labor with broad authority to waive its provisions.

Hurricane Katrina and the administration's response

On August 29, 2005, Hurricane Katrina made landfall as a Category Four hurricane, representing the most devastating natural disaster in the modern history of the United States. The amount of damage to property caused by Hurricane Katrina and the subsequent flooding of New Orleans is conservatively estimated to be $50 billion, but even that number does not catalogue the devastating impact of families and communities of this disaster. The most recent reports indicate that more than 1,200 Americans were killed, and more than one million were forced to abandon their homes in the wake of Hurricane Katrina's devastation.

In response to these historic levels of damage, on September 8, 2005, invoking section 6 of the Davis-Bacon Act, President Bush issued a proclamation suspending the provisions of Davis-Bacon and all other acts which apply Davis-Bacon and which provide for the payment of prevailing wages for contracts entered into on or after September 8, 2005 in counties and parishes affected by Hurricane Katrina.[12] The President's proclamation does not set any explicit time limitation on the duration of the suspension. To date, the Secretary of Labor has not suspended application of the Service Contract Act in response to Hurricane Katrina. Neither the President nor the Secretary of Labor has suspended (nor could they) the Fair Labor Standards Act.

Part B: H. Res. 467

H. Res. 467 directs the President to transmit to the House of Representatives within fourteen days certain specified information relating to contracts for services or construction related to Hurri-

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[11] Id.

[12] *See* Proclamation of President George W. Bush, To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina, No. 7924 (September 8, 2005). This proclamation suspends the application of Davis-Bacon in certain specified parishes and counties in Louisiana, Mississippi, Alabama, and Florida. Specifically, the waiver extends to the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington in the State of Alabama; the counties of Broward, Miami-Dade, and Monroe in the State of Florida; the parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Clairborne, Concordia, Desoto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn in the State of Louisiana; and the counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Desoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Homes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo in the State of Mississippi.

cane Katrina recovery that relate to wages and benefits to be paid to workers.

Specifically, the resolution calls for the production of: (1) copies of any portions of any contracts in the President's possession for services or building or other construction (including pre-awarded contracts or contracts that were modified or extended) related to Hurricane Katrina recovery or rebuilding that address wages and benefits to be paid to workers pursuant to the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act that were awarded by the Federal Emergency Management Agency (or at the request of such agency) or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers; and (2) any communications in the President's possession made or received, on or after August 26, 2005, by the Federal Emergency Management Agency or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers, related to compliance with or enforcement of the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act in the geographic areas specified in the President's Proclamation.

Part C: Committee Concerns

For the reasons set forth below, the Committee opposes adoption of H. Res. 467.

H. Res. 467 Threatens the Release of Confidential Business Information (CBI). Foremost, the Committee is concerned that H. Res. 467 will result in the disclosure of confidential business information and proprietary material, which ultimately could be harmful to federal contractors and the federal procurement process.

Under the Freedom of Information Act (FOIA), contractors are able to present a case for what should remain confidential when a FOIA request is made of an agency. This information could include personal data, unit pricing information, technology and process description, or general CBI. Inasmuch as H. Res. 467 is not a FOIA request, contractors would not be consulted as to what information would be produced, and this information would be directly transferred to Congress. The Committee is deeply concerned about the potential for the release of confidential business information inherent in this process. Such an inadvertent release could destroy contractors' competitive advantage or disclose proprietary information.

Moreover, inasmuch as the information sought by the resolution is obtainable via FOIA, the resolution is unnecessary.[13] The Committee believes that this information can be gathered through less intrusive means which would not tend to jeopardize confidential and proprietary business information and would protect the public interest in an efficient federal procurement process.

H. Res. 467 is Unduly Burdensome and Overbroad. The information requested in the resolution would have to be found on a case-by-case review of every contract entered into by the relevant departments and agencies. This exercise would be unduly burdensome to the agencies and executive branch as a whole, and would detract from recovery efforts in the Gulf Coast region.

[13] Indeed, on September 22, 2005, Representative George Miller made such a request to the Departments of Labor and Homeland Security.

Moreover, the resolution is overbroad. A resolution of inquiry can only produce "facts." The communications encompassed by the resolution are not limited to "facts" and thus should not be subject to disclosure in response to the inquiry. At a minimum, seeking the production of these communications would chill debate between the agencies and the President on issues of national importance.[14]

In light of these facts, the Committee believes that this information should be obtained through more narrow and focused means that do not unduly burden the capacity of the Administration and do not seek to obtain material beyond the legitimate scope of inquiry.

H. Res. 467 Is a Challenge to the Prerogatives of the Majority. Finally, H. Res. 467 appears to be not intended to procure substantive information but rather merely to delve into privileged Administration policy.

The political nature of this exercise is underscored by the fact that the resolution requests information as to contracts and communications regarding wages to be paid under the Service Contract Act (which has not been suspended) and the Fair Labor Standards Act (which likewise has not been suspended, and which contains no requirement that workers be paid "prevailing wages"). Similarly, the broad request for "communications" regarding these laws—dating back to a date before Hurricane Katrina hit—suggest that the Minority is attempting to use this parliamentary tool for political means.

Perhaps most importantly, as a matter of procedure, H. Res. 467 challenges the Majority's prerogatives and its right to set the legislative agenda, and for that reason alone should be rejected.

CONCLUSION

For the foregoing reasons, the Committee opposes the adoption of H. Res. 467, and reports it unfavorably to the House of Representatives with the recommendation that the resolution not be adopted.

SECTION-BY-SECTION

Section 1. Requests the President to transmit to the House of Representatives not later than 14 days after adoption of the resolution: (1) copies of any portions of any contracts in the President's possession for services or building or other construction (including pre-awarded contracts or contracts that were modified or extended) related to Hurricane Katrina recovery or rebuilding that address wages and benefits to be paid to workers pursuant to the Act commonly known as the Davis-Bacon Act (40 U.S.C. § 3141 et seq.), the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.*), or the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*) that were awarded by the Federal Emergency Management Agency (or at the request of such agency) or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers; and (2) any communications in the President's possession made or received, on or after August 26, 2005, by

[14] Indeed, it is possible if not likely that the President would assert executive privilege to encompass certain documents, such that the resolution would not produce the material the Minority is requesting.

the Federal Emergency Management Agency or by the Departments of Labor, Education, Homeland Security, Health and Human Services, or Defense, or the Army Corps of Engineers, related to compliance with or enforcement of the Act commonly known as the Davis-Bacon Act (40 U.S.C. §3141 *et seq.*), the Service Contract Act of 1965 (41 U.S.C. § 351 *et seq.*), or the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*) in the geographic areas specified in the President's Proclamation 7924 of September 8, 2005.

ROLL CALL VOTES

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 BILL H.Res. 467 DATE October 20, 2005

H.Res. 467 was ordered unfavorably reported by a vote of 25 – 20

SPONSOR/AMENDMENT Mr. McKeon / motion to report the resolution unfavorably to the House with the recommendation that the resolution do not pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. SOUDER	X			
Mr. NORWOOD	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER				X
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. PORTER	X			
Mr. KLINE	X			
Mrs. MUSGRAVE	X			
Mr. INGLIS	X			
Ms. McMORRIS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO				X
Mr. JINDAL	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mrs. DRAKE	X			
Mr. KUHL	X			
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY				X
Mr. TIERNEY		X		
Mr. KIND		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Ms. McCOLLUM		X		
Mr. DAVIS		X		
Mr. GRIJALVA		X		
Mr. VAN HOLLEN				X
Mr. RYAN		X		
Mr. BISHOP		X		
Mr. BARROW		X		
TOTALS	25	20		4

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H. Res. 467 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the rule does not apply because H. Res. 467 is not a bill or joint resolution that may be enacted into law.

CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes that H. Res. 467 makes no changes to existing law.

MINORITY VIEWS

INTRODUCTION

In response to President Bush's decision to suspend the Davis-Bacon prevailing wage law, Ranking Member George Miller, along with the entire Minority caucus of this Committee, introduced H. Res. 467. This resolution is a first step in desperately needed oversight of executive branch actions in the wake of Hurricane Katrina—a serious responsibility which this Committee's Majority refuses to accept.

H. Res. 467 requests that the President provide the House of Representatives with two distinct sets of information. First, the President is requested to produce the provisions in Katrina-related construction and service contracts dealing with wages to be paid by the contractors, whether those provisions are pursuant to the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act. Second, the President is requested to produce any communications made or received by the Federal Emergency Management Agency, the Department of Labor, Education, Homeland Security, Health and Human services, Defense, or the Army Corps of Engineers, which relate to compliance with or enforcement of the three aforementioned federal wage laws.

This resolution of inquiry is necessary for two fundamental reasons. First, the data is critical for the House of Representatives to conduct proper oversight of the executive branch on the need for and effect of the suspension of the Davis-Bacon Act. Second, the form of the request—a congressional resolution which would request the President's compliance within 14 days—is necessitated by the Administration's lackluster track record in producing information requested by other means. without the full force of Congress.

THE CONGRESSIONAL DUTY TO CONDUCT OVERSIGHT

Following Hurricane Katrina, President George W. Bush declared a national emergency for one purpose only. On September 8, 2005, the President proclaimed that Hurricane Katrina constituted a national emergency. He thereby suspended the Davis-Bacon Act's prevailing wage law. In the wake of Katrina, he exercised no further emergency powers than the power to free federal contractors from prevailing wage requirements. After all of the devastation wrought by Katrina and the poverty and injustice that both the Hurricane and the lackadaisical federal response laid bare, the President saw only one national emergency: that in his estimation the workers of the Gulf Coast were overpaid.

The Davis-Bacon Act requires federal contractors working on construction projects to pay their workers the prevailing wage for their work. The prevailing wage is not a union wage, nor is it any kind of premium wage. It is a wage set by the market—the typical wage

for that kind of work in that locality. This law prevents federal taxpayer dollars from being used to drive down an area's wages.

The prevailing wages along the Gulf Coast are already low. For example, the prevailing wage for a truck driver engaged in highway construction work in Gulfport, Mississippi, is $6.14 per hour. In New Orleans, the prevailing wage for such work ranges from $10.60 to $13.24 per hour. Meanwhile, the national average wage for a truck driver is $13.57 per hour. The prevailing wage for a residential carpenter in Gulfport is $7.13 per hour. In New Orleans, it is $11.78 per hour. Meanwhile, the national average for such a carpenter is $17.83 per hour. Suspension of the Davis-Bacon Act enables federal contractors to ignore even these modest wage requirements and take advantage of workers at a very vulnerable time—when they have lost everything they own—by either paying them less than the pre-Hurricane market rate or not hiring them at all and turning to cheaper labor imported from outside of the area.

In the seven weeks following Hurricane Katrina, the Louisiana Department of Labor processed 271,846 eligible unemployment claims for hurricane victims. Thanks to the Davis-Bacon Act suspension, as those newly unemployed individuals begin looking for work, federal contractors are well-situated to exploit the coming labor surplus, for their own benefit and at the expense of both desperate Gulf Coast workers and federal taxpayers. The less workers are paid, the more direct relief is needed. The less workers are paid, the less quality of work can be expected. And the less workers are paid, the higher the profits of contractors.

Suspension of the Davis-Bacon Act has a wide-ranging impact on reconstruction and relief efforts. At the same time that there are calls for massive and direct federal relief of the families of the Gulf Coast, the suspension of the Davis-Bacon Act undermines any requirement that those families' breadwinners be paid a decent wage for the work they do rebuilding their communities. At the same time that there are calls for rebuilding cities like New Orleans in a sounder fashion, less susceptible to the kind of destruction that another hurricane could bring, the suspension of the Davis-Bacon Act means that federal contractors need not hire the best-skilled workers to provide high-quality reconstruction. Instead, reconstruction may be done on the cheap. At the same time that there are calls for addressing the poverty that left so many people with so few resources to deal with the hurricane, the suspension of the Davis-Bacon Act means that federal contractors can hire low-skilled workers at low wages with no *quid pro quo* to enroll those workers in apprenticeship programs so that they may gain the kind of long-term job skills that will lead to future jobs, with higher pay and benefits. By every measure, the Davis-Bacon Act suspension is counterproductive.

The Congress should and must engage in oversight of the impact of the President's actions. H. Res. 467 is a first step in oversight. It would provide the Congress with insight into the number of contracts being let and whether those contracts provide for basic wage protections through any one of the core federal wage laws. Through this information request, the Congress may ascertain the full scope of the contracting involved in Katrina-related construction and

service projects and the extent to which that contracting is explicitly subject to any minimal wage requirements. H. Res. 467 would also provide Congress with wage-related communications made or received by the key federal agencies engaged in Katrina-related reconstruction and relief projects. These communications would give the Congress further insight into the full scope of the enforcement or non-enforcement of our nation's wage laws in the rebuilding and relief effort. With this data, the Congress may begin answering basic questions: How many contracts have been let in Katrina-related relief and reconstruction projects? How many of those contracts contain wage provisions? What, if any, wage requirements are imposed upon those contracts? To what extent are agencies enforcing or not enforcing wage requirements on federal contractors?

The Congress should not shrink from its responsibility in conducting oversight of the Katrina reconstruction process. Hurricane Katrina may be the most costly natural disaster to strike the United States, in terms of both rebuilding a ruined infrastructure and providing relief to devastated American families. The infrastructure must be rebuilt, and it must be rebuilt properly. Lives must also be rebuilt. Cutting wages accomplishes neither of these goals. The Congress should be asking the Administration tough questions about this Davis-Bacon Act suspension and the contracting process in general.

Unfortunately, by voting to unfavorably report H. Res. 467, the Majority has abdicated its responsibility. The Minority, by its unanimous sponsorship of this resolution and its votes for a favorable report, makes clear its commitment to rigorous oversight by the Congress. Particularly given the unarguably shoddy and incompetent management of the Katrina crisis by the federal government, oversight is desperately needed during the long reconstruction ahead.

THE NECESSITY OF RESOLUTIONS OF INQUIRY IN THIS MATTER

The Majority has suggested that Members rely upon the Freedom of Information Act to obtain information from the Administration. According to the Majority, "inasmuch as the information sought by the resolution is obtainable via FOIA, the resolution is unnecessary." But H. Res. 467 is made necessary by the Administration's poor track record in responding to requests for information made by Members of Congress. As the Majority points out, Ranking Member Miller filed a FOIA request with the Departments of Labor and Homeland Security on September 22, 2005. Under the Freedom of Information Act, those Department must determine within twenty days whether to comply with such a request and immediately notify the requester of that determination. As of this writing, more than twenty business days have passed since that request was made. There has been no response from either the Department of Labor or the Department of Homeland Security to Ranking Member Miller's FOIA request. Unfortunately, this lack of response is par for the course with this Administration. The Administration's disdain for information requests from Members of Congress—elected officials representing hundreds of thousands of constituents—is outrageous and only renders resolutions of inquiry, such as H. Res. 467, more necessary and more urgent.

OTHER UNFOUNDED OBJECTIONS OF THE MAJORITY

The Majority makes a number of other objections to the resolution of inquiry, all of which are unfounded.

The Majority warns that H. Res. 467 would force the production of confidential business data in the federal contracts, such as personal data, unit pricing information, technology and process description, or general CBI. H. Res. 467 does nothing of the sort. It does not request the complete federal contract. It merely requests any wage provisions contained within those contracts as a function of the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act. No properietary information would be produced.

The Majority warns that "it is possible if not likely that the President would assert executive privilege to encompass certain documents," with respect to the request for communications by and to federal agencies regarding compliance with or enforcement of the federal wage laws. But the Congress should not shrink from its oversight responsibility merely because the President may or could claim executive privilege with respect to some of what could be encompassed by an information request. Some of that information is certainly not subject to executive privilege, and any non-privileged information should be produced. By arguing that no information should be requested because the President might refuse to turn over some of its lays bare the Majority's fundamental inability to subject this President to any congressional oversight whatsoever.

The Majority calls this resolution of inquiry and "exercise" of a "political nature." Throughout the markup, the Majority made this claim. Yet the Davis-Bacon Act has a long history of bipartisan support. The President's suspension raises widespread and bipartisan concern within the Congress. H. Res. 467 is not the only resolution of inquiry concerning the impact of the Davis-Bacon Act suspension on wages and federal contracting. Members of the Majority party introduced a similar resolution, H. Res. 488, on October 7, 2005, referred to the Committee on Transportation and Infrastructure. Oversight is not a partisan exercise. It is a duty of the legislative branch of government. Refusing to fulfill this duty, however, is a plainly partisan exercise, damaging to the long-term effectiveness of the Congress and to the country at large.

DAVIS-BACON ACT REINSTATEMENT

As of this writing, on October 26, 2005, under pressure from a united front of Minority party members, a few Majority party members, the religious community, and the labor movement, the White House backed down on the suspension of the Davis-Bacon Act. According to reports, the President will reinstate the Davis-Bacon Act for Gulf Coast workers as of November 8, 2005. The Minority is relieved that the President is now planning on reversing this mistake. It should be noted that the reversal comes after Ranking Member Miller filed a joint resolution under the National Emergencies Act which would force a vote on the Davis-Bacon suspension. Many questions remain unanswered, however, including the full range of contracts that evaded the prevailing wage requirements and how and whether all of the federal wage laws were en-

forced or complied with during the suspension period and beyond. This resolution of inquiry would being to provide those answers.

GEORGE MILLER.
DALE E. KILDEE.
SUSAN A. DAVIS.
DANNY K. DAVIS.
CAROLYN MCCARTHY.
DONALD M. PAYNE.
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MAJOR R. OWENS.
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RUSH HOLT.
BETTY MCCOLLUM.
ROBERT E. ANDREWS.
JOHN TIERNEY.
CHRIS VAN HOLLEN.
JOHN BARROW.
TIMOTHY BISHOP.
TIM RYAN.
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DAVID WU.

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